

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of application Serial No. 76/388,624
For the mark FEDCHECK
Publish in the Official Gazette on October 8, 2002

TTAB

FEDCHEX, LLC,

Opposer,

vs.

Rolando Banciella

Applicant.

Opposition No. 91157589

June 9, 2004

06-09-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

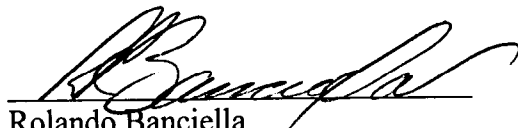
Dear Ms. Angela Lykos:

As requested, enclosed you will find a copy of the complaint. This case has been dismissed for lack of personal jurisdiction. I am expecting the case to be re-filed in Florida, but it has not been as of yet. I'm assuming that the TTAB case may proceed. I would like to request that should a new federal case be re-filed in Florida or California, that the TTAB would hold proceeding again. My attorney in California has a strong belief that the case may not be re-filed in Florida due to the fact that the California case had no merits. I feel their goal for filing the complaint in California was an attempt to scare me into submission, since they have more money than I do.

I would greatly appreciate if you could start with a new schedule for the TTAB case. I have been concentrating all my effort and most of my money on the Federal case, because, I was informed that if I lose the Federal case that the TTAB would see that as a negative and rule against me.

I thank you and appreciate all your help.

Sincerely,



Rolando Banciella
12471 S.W. 97 Street
Miami, Florida 33186
Tel. (305) 271-2755

FILED

2003 SEP 29 PM 1:34

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

BY

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GOODMAN & CRAY, LLP
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Attorneys for Plaintiff,
FEDCHEX, LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

FEDCHEX, LLC, a California
limited liability company,

Plaintiff,

v.

FEDCHECK, INC., a Florida
corporation, ROLANDO
BANCIELLO, an individual,
RICARDO BANCIELLO, an
individual, and DOES 1 through
10,

Defendants.

CASE NO. CV03-6996-CAS(CWx)

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR:

1. TRADEMARK INFRINGEMENT;
2. FALSE DESIGNATION OF
ORIGIN AND UNFAIR
COMPETITION;
3. FALSE ADVERTISING;
4. CYBERSQUATTING; AND
5. COMMON LAW UNFAIR
COMPETITION

DEMAND FOR JURY TRIAL

Plaintiff FEDCHEX, LLC alleges as follows:

NATURE OF CLAIMS

1. Plaintiff brings this action under Section 43 of the Lanham Act,
15 U.S.C. §1125, to secure damages and equitable relief against an

1 "inactive" Florida corporation currently conducting business, its Director,
2 and its registered agent, who is also the applicant for registration of an
3 infringing trademark used by the corporation, as well as the owner of
4 infringing domain names, for engaging in trademark infringement and
5 deceptive acts or practices in connection with advertising, marketing and
6 sale of check collection and verification services in the United States.

7 JURISDICTION AND VENUE

8 2. This Court has jurisdiction over the Lanham Act claims set
9 forth below by virtue of 15 U.S.C. § 1121(a), 28 U.S.C. § 1331 and 28
10 U.S.C. § 1338(a), and over the other claims set forth below by virtue of 28
11 U.S.C. § 1338(b) and of pendent jurisdiction.

12 3. Venue is proper in this district under 28 U.S.C. §§1391 (b) and
13 (c) in that the Defendants do business, market, offer or sell services in this
14 district and a substantial part of the events or omissions giving rise to the
15 claims stated herein occurred within this judicial district.

16 THE PARTIES

17 4. Plaintiff FEDCHEX, LLC ("Plaintiff") is, and at all times
18 mentioned herein, was, a limited liability company organized and existing
19 under and by virtue of the laws of the State of California with its principal
20 place of business located at 17252 Armstrong Avenue, Suite A, Irvine,
21 California 92614.

22 5. Defendant ROLANDO BANCIELLO ("Rolando"), an
23 individual residing in the State of Florida, is, and at all times mentioned
24 herein, was the registered agent of Defendant FEDCHECK, INC.
25 ("Fedcheck"), the applicant for registration of the mark FEDCHECK before
26 the United States Patent and Trademark Office and the listed owner of the
27 domain names "fedcheck.com" and "fedchecks.com." Plaintiff is informed
28

1 and believes and based thereon alleges, that at all times herein mentioned
2 Rolando personally participated in, authorized, directed, controlled, and/or
3 ratified the wrongful conduct of Fedcheck as alleged herein.
4

5 6. Defendant Fedcheck is an "inactive" corporation organized
6 under the laws of the State of Florida and currently conducting business
7 with its principal place of business located at 12471 SW 97 Street, Miami,
8 Florida 33186.

9 7. Defendant RICARDO BANCIELLO ("Ricardo"), an individual
10 residing in the State of Florida, is, and at all times mentioned herein, was
11 the Director of Fedcheck. Plaintiff is informed and believes and based
12 thereon alleges, that at all times herein mentioned Ricardo personally
13 participated in, authorized, directed, controlled, and/or ratified the wrongful
14 conduct of Fedcheck as alleged herein.

15 8. Plaintiff is unaware of the true names and capacities of the
16 Defendants sued herein as DOES 1 through 10, inclusive. Therefore,
17 Plaintiff sues said DOES, and each of them, by such fictitious names.
18 Plaintiff is informed and believes, and thereon alleges, that DOES 1 through
19 10, and each of them, are in some way legally responsible for the injuries
20 and damages alleged herein, and Plaintiff prays that their true names and
21 capacities, when ascertained, may be incorporated by appropriate
22 amendment.

23 9. Plaintiff is informed and believes, and based thereon alleges,
24 that at all times herein mentioned, each of the Defendants were the agent of
25 each of the remaining Defendants and, in doing the things hereinafter
26 alleged, was acting within the course and scope of such agency and with the
27 permission and/or consent of the other Defendants.

28 COMMON ALLEGATIONS

10. Plaintiff specializes in financial services relating to the usage

1 of checks, including, but not limited to, check processing and re-
2 presentment, electronic check conversion, and check authorization.

3
4 11. Since at least as early as November 2001, and continuously
5 thereafter, Plaintiff began using the trademark FEDCHEX, as a word mark
6 and a stylized word mark, in interstate commerce in connection with
7 providing financial services relating to the usage of checks in transactions.
8 Plaintiff uses the mark to identify and distinguish Plaintiff's services from
9 competitors.

10 12. Through the substantial investment of time and money in
11 advertising and promoting the FEDCHEX mark, continued use of the mark
12 since at least November 2001, the mark's distinctive qualities, as well as
13 other factors, the mark has acquired secondary meaning among the
14 consuming public.

15 13. Furthermore, Plaintiff has acquired substantial goodwill
16 through the use of the FEDCHEX mark in interstate commerce and on the
17 Internet through its website, located at Plaintiff's domain name
18 "fedchex.com," which was established on August 29, 2001.

19 14. Plaintiff's website is a valuable tool for prospective and
20 existing customers located throughout the United States as it describes the
21 available services, lists important contact information and includes various
22 interactive tools.

23 15. Defendant Fedcheck is a direct competitor of Plaintiff.
24 Fedcheck provides financial services relating to the usage of checks in
25 transactions, including, but not limited to, check verification and collection
26 services. Plaintiff is informed and believes, and based thereon alleges, that
27 Fedcheck is currently in inactive status within the State of Florida. Yet,
28 Plaintiff is informed and believes, and based thereon alleges, that Fedcheck
continues to conduct business as a corporation despite its noncompliance

1 with Florida law governing corporations.

2
3 16. Within the last two years, Defendants marketed Fedcheck's
4 services under the mark FEDCHECK both as a word mark and a stylized
5 word mark that closely resembles Plaintiff's stylized word mark.
6 Defendants advertised Fedcheck's services on the Internet at the website
7 accessible through the domain names "fedcheck.com" and "fedchecks.com"
8 which are owned by Rolando and utilized by Fedcheck. Defendants' use of
9 the mark FEDCHECK as both a trade name and trademark, and the
10 registration and use of the aforementioned domain names, is likely to cause
11 consumer confusion in violation of federal unfair competition laws.

12 17. Upon information and belief, Defendants knew or should have
13 known of the trademarks, trade name and domain name used by Plaintiff
14 and that Plaintiff was a direct and active competitor of Defendants, and
15 knew or should have known that their actions would likely cause a
16 consumer seeking Plaintiff or Plaintiff's services, or to purchase Plaintiff's
17 services, or to obtain information about Plaintiff's services, to believe that
18 Defendants' services were offered by, sponsored by or affiliated with
19 Plaintiff, or that Plaintiff's services were offered by, sponsored by, or
20 affiliated with Defendants or Defendants' services.

21 18. Upon discovering that Defendants had misappropriated the
22 trademark and trade name as alleged herein, Plaintiff served a cease and
23 desist letter requesting that Defendants abandon their efforts to register their
24 confusingly similar trademarks before the United States Patent and
25 Trademark Office and refrain from any future use of the mark FEDCHECK.
26 Defendants did not comply with such requests thus Plaintiff commenced an
27 Opposition proceeding before the Trademark Trials and Appeals Board and
28 has been forced to file the instant action.

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FIRST CLAIM FOR RELIEF

**(For Trademark Infringement Under Section 43(a) of
the Lanham Act Against All Defendants)**

19. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 18, inclusive, and incorporates them by reference herein.

20. Subsequent to the time Plaintiff first adopted and began use in interstate commerce of the FEDCHEX trademark, Defendants, without consent or license from Plaintiff, infringed the mark and unfairly competed with Plaintiff by adopting, copying and using the confusingly similar FEDCHECK word mark and stylized word mark in commerce for the same or similar services.

21. The acts of Defendants as alleged herein constitute a violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), as well as applicable state law, in that Defendants have used, in connection with competing goods or services, a mark, term, name, symbol or device, or any combination thereof, which is likely to cause confusion, and to cause mistake, or to deceive as to the affiliation, connection or association of Defendants with Plaintiff, or as to the origin, sponsorship and approval of the Defendants' services and commercial activities with Plaintiff.

22. Upon information and belief, Defendants' heretofore alleged acts of trademark infringement and unfair competition have been committed with intent to cause confusion, mistake and to deceive.

23. Plaintiff has requested that Defendants cease and desist infringing conduct, but Defendants have refused to do so.

24. By reason of the Defendants' acts as alleged herein, Plaintiff has and will suffer damage to its business reputation and goodwill, loss of sales and profits, costs of corrective advertising, and the value of royalties

1 and/or profits obtained by Defendants in an amount to be proven at trial but
2 believed to be in excess of \$100,000.

3 25. Plaintiff has no adequate remedy at law and will be irreparably
4 harmed by the continued or threatened conduct of Defendants as alleged
5 herein.

6 26. This is an exceptional case of trademark infringement under
7 Section 43(a) of the Lanham Act, and therefore Plaintiff is entitled to
8 recover its reasonable attorney's fees and costs, and three times its actual
9 damages, pursuant to Section 35 of the Lanham Act, 15 U.S.C. § 1117.

10 **SECOND CLAIM FOR RELIEF**

11 **(For False Designation of Origin and Unfair Competition Under Section**
12 **43(a) of the Lanham Act Against All Defendants)**

13 27. Plaintiff realleges each and every allegation set forth in
14 Paragraphs 1 through 26, inclusive, and incorporates them by reference
15 herein.

16 28. Subsequent to the time Plaintiff first adopted and began use in
17 interstate commerce of the FEDCHEX trademark, Defendants, without
18 consent or license from Plaintiff, infringed the mark and unfairly competed
19 with Plaintiff by, among other things, adopting, copying and using a
20 confusingly similar mark for the same or related services.

21 29. The acts of Defendants as alleged herein constitute a violation
22 of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), as well as
23 applicable state law, in that Defendants have used in connection with goods
24 and services a false designation of origin, a false and misleading description
25 and representation of fact which is likely to cause confusion, and to cause
26 mistake, and to deceive as to the affiliation, connection or association of
27 Defendants with Plaintiff, and as to the origins, sponsorship and approval of
28 the Defendant's services and commercial activities with Plaintiff.

THIRD CLAIM FOR RELIEF

(For False Advertising Under the Lanham Act Against All Defendants)

30. Plaintiff realleges each and every allegation set forth in Paragraphs 1 through 29, inclusive, and incorporates them by reference herein.

31. Defendants' foregoing use of the trade name and mark FEDCHECK is a use in interstate commerce of words and/or symbols, a false designation of origin, and/or a false description or representation. Such use has misled and deceived, and will continue to mislead and deceive, the public into believing that Defendants' services originate with the Plaintiff, are licensed by Plaintiff, or are in some way sanctioned by, or otherwise affiliated with, Plaintiff.

32. Defendants' unauthorized association of services with Plaintiff has resulted in profits to the Defendants and has thereby deprived Plaintiff of revenue to which it is entitled.

33. By so imitating and infringing Plaintiff's trademarks in interstate commerce, Defendants have violated Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

34. By reason of the foregoing, Plaintiff has been injured in an amount not yet ascertained and is entitled to the remedies provided for in 15 U.S.C. § 1116 et seq.

FOURTH CLAIM FOR RELIEF

(Trademark Cybersquatting in Violation of 15 U.S.C. § 1125(d))

Against All Defendants)

35. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 34, inclusive.

36. Plaintiff has used the mark FEDCHEX in commerce from at least as early as November 2001.

1 37. Defendants have registered and used the domain names
2 "fedcheck.com" and "fedchecks.com" with the bad faith intent to profit from
3 the FEDCHEX mark.

4 38. Defendants' use of a domain name that is confusingly similar to
5 the FEDCHEX mark is likely to cause consumers mistakenly to believe that
6 the domain names "fedcheck.com" and "fedchecks.com" and the material
7 posted at these domain names are sponsored or approved of by Plaintiff, or
8 that "fedchecks.com" and "fedcheck.com" is otherwise affiliated with or has
9 obtained permission from Plaintiff.

10 39. Plaintiff is informed and believes and based thereon alleges
11 that Defendants have and may continue to receive emails from consumers
12 intended for Plaintiff.

13 40. By engaging in the activities described above, Defendants are
14 engaging in trademark cybersquatting in connection with services
15 distributed in interstate commerce in violation of Section 43(d) of the
16 Lanham Act, 15 U.S.C. § 1125(d).

17 **FIFTH CLAIM FOR RELIEF**

18 **(For Unfair Competition Under California Common Law and**
19 **Statutory Law by Plaintiff Against All Defendants)**

20 41. Plaintiff Fedchex repeats and realleges the allegations
21 contained in paragraphs 1 through 40, inclusive.

22 42. The conduct of Defendants as alleged herein has the capacity to
23 deceive the public, and constitute unfair methods of competition.
24 Furthermore, this conduct constitutes an unlawful, unfair or fraudulent act
25 or practice in the conduct or furnishing of a business, trade or service in
26 California pursuant to California's Unfair Competition Law, Calif. Business
27 and Professions Code § 17200 ("UCL"), as well as the common law of the
28 State of California.

1 43. Plaintiff is entitled to restitution of any monies obtained by
2 Defendants as a direct and proximate result of the violations of the UCL and
3 common law, and reasonable attorneys' fees under California Code of Civil
4 Procedure § 1021.5.

5 44. The wrongful acts of Defendants, as alleged herein, unless
6 restrained and enjoined by order of this Court, will cause great and
7 irreparable injury to the general public and to Plaintiff, its business, its
8 reputation and goodwill. Plaintiff has no adequate remedy at law for the
9 injuries that have been or will continue to be sustained in this action.

10 WHEREFORE, Plaintiff prays that this Court enter judgment in its
11 favor and against Defendant as follows:

12 ON ALL CLAIMS FOR RELIEF

13 1. That this Court order that Defendants, its officers, agents,
14 servants, employees, licensees, Internet webmasters, attorneys, parents,
15 distributors, subsidiaries and related companies and all persons acting for,
16 or on behalf of them, with notice of the court's order by personal service,
17 electronic mail or otherwise, and each of them, be temporarily, preliminarily
18 and thereafter permanently enjoined and restrained from directly or
19 indirectly:

20 a) Using the trade name "Fedcheck, Inc.," the trademark
21 FEDCHECK, the domain names "fedcheck.com" and "fedchecks.com" or
22 mark, term, name, symbol or device, or any combination thereof, which is
23 likely to cause confusion, and to cause mistake, or to deceive as to the
24 affiliation, connection or association of Defendants with Plaintiff, or as to
25 the origin, sponsorship and approval of the Defendants' services and
26 commercial activities with Plaintiff,

27 b) Disseminating, using or distributing any website pages,
28 advertising or Internet code words, keywords or titles, or any other

1 promotional materials with an appearance that so resembles Plaintiff's
2 trademark or trade name as to create a likelihood of confusion, mistake or
3 deception,

4 c) From otherwise engaging in any other acts or conduct
5 which would cause consumers to believe erroneously that Defendants'
6 services are somehow sponsored, authorized, licensed by, or are in some
7 other way associated or affiliated with Plaintiff;

8 2. That this Court order that all labels, signs, prints, packages,
9 wrappers, and receptacles in the possession of Defendants bearing
10 Plaintiff's trade name or trademark, or other use incorporating such marks,
11 and all advertising, or promotional materials, and all plates, molds, matrices,
12 and other means of making the same, shall be delivered up and destroyed,
13 and that Defendants be required to delete from its computer files, internet
14 web pages, metatags, hidden codes, hard drives, backup, archives, cache
15 memory, and other computer or Internet storage devices, any reference to
16 Plaintiff's trade name or trademark;

17 3. That this Court order that Defendants account to Plaintiff for
18 any and all profits derived by Defendants from the offering for sale, sale,
19 marketing, or promoting of its goods or services, and for all damages
20 sustained by Plaintiff by reason of said acts of infringement, unfair
21 competition, and breach of duty complained of herein;

22 4. That Plaintiff recovers such other damages as may be
23 appropriate, including, but not limited to, actual damages, lost profits,
24 and/or reasonable royalties;

25 5. That Defendants be deemed to hold any profits derived in trust
26 for Plaintiff;

27 6. That the Court award Plaintiff treble the amount of actual
28 damages actually suffered by Plaintiff;

1 7. That the Court award punitive and exemplary damages against
2 Defendants and in favor of Plaintiff;

3 8. That the Court order and find this case to be an exceptional
4 case and that Plaintiff be awarded its reasonable attorneys' fees;

5 9. For costs of suit;

6 10. For pre-judgment interest;

7 11. For appropriate equitable relief to redress consumer injury such
8 as restitution and disgorgement of ill gotten gains.

9 12. For such other and further relief as the Court deems necessary
10 or proper.
11

12 Date: September 26, 2003

GOODMAN & CRAY, LLP

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15 By: 

Eric J. Goodman
Attorney for Plaintiff
FEDCHEX, LLC
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SEND

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FEDCHEX, LLC

CASE NUMBER

CV03- 6996 CAS (CWx)

PLAINTIFF(S)

V.

FEDCHECK, INC., ETAL

DEFENDANT(S).

**NOTICE TO PARTIES OF ADR PILOT
PROGRAM**

2003 SEP 29 PM 1:34
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA, CA

FILED

Dear Counsel,

The district judge to whom the above-referenced case has been assigned is participating in an ADR Pilot Program. All counsel of record are directed to jointly complete the attached ADR Pilot Program Questionnaire, and plaintiff's counsel (or defendant in a removal case) is directed to concurrently file the Questionnaire with the report required under Federal Rules of Civil Procedure 26(f).

Clerk, U.S. District Court

09/29/03

Date

By: K KIRKSEY SMITH

Deputy Clerk

cc: ADR Program Coordinator

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FEDCHEX, LLC

PLAINTIFF(S)

V.

FEDCHECK, INC., ETAL

DEFENDANT(S)

CASE NUMBER

CV03- 6996 CAS (CWx)

ADR PILOT PROGRAM QUESTIONNAIRE

(1) What, if any, discovery do the parties believe is essential in order to prepare adequately for a settlement conference or mediation? Please outline with specificity the type(s) of discovery and proposed completion date(s). Please outline any areas of disagreement in this regard. Your designations do not limit the discovery that you will be able to take in the event this case does not settle.

(2) What are the damage amounts being claimed by each plaintiff? Identify the categories of damage claimed [e.g., lost profits, medical expenses (past and future), lost wages (past and future), emotional distress, damage to reputation, etc.] and the portion of the total damages claimed attributed to each category.

(3) Do the parties agree to utilize a private mediator in lieu of the court's ADR Pilot Program?

Yes ☐ No ☐

(4) if this case is in category civil rights - employment (442), check all boxes that describe the legal bases of plaintiff claim(s).

☐ Title VII

☐ Age Discrimination

☐ 42 U.S.C. section 1983

☐ California Fair Employment and Housing Act

☐ Americans with Disabilities Act of 1990

☐ Rehabilitation Act

☐ Other _____

I hereby certify that all parties have discussed and agree that the above-mentioned responses are true and correct.

Date

Attorney for Plaintiff

Date

Attorney for Defendant

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

Pursuant to the Local Rules Governing Duties of Magistrate Judges, the following Magistrate Judge has been designated to hear discovery motions for this case at the discretion of the assigned District Judge:

(CWx)

- | | |
|--|---|
| <input type="checkbox"/> Paul L. Abrams
<input type="checkbox"/> Robert N. Block
<input type="checkbox"/> Rosalyn M. Chapman
<input type="checkbox"/> Elgin Edwards
<input type="checkbox"/> Charles Eick
<input type="checkbox"/> Marc Goldman
<input type="checkbox"/> Stephen J. Hillman
<input type="checkbox"/> Jeffrey W. Johnson
<input type="checkbox"/> Ann I. Jones
<input type="checkbox"/> Victor B. Kenton
<input type="checkbox"/> Stephen G. Larson
<input type="checkbox"/> Jennifer T. Lum | <input type="checkbox"/> James W. McMahon
<input type="checkbox"/> Margaret A. Nagle
<input type="checkbox"/> Arthur Nakazato
<input type="checkbox"/> Fernando M. Olguin
<input type="checkbox"/> Brian Q. Robbins
<input type="checkbox"/> Suzanne H. Segal
<input type="checkbox"/> Carolyn Turchin
<input type="checkbox"/> Patrick J. Walsh
<input type="checkbox"/> A. J. Wistrich
<input checked="" type="checkbox"/> CARLA WOHRLE
<input type="checkbox"/> Ralph Zarefsky |
|--|---|

Upon the filing of a discovery motion, the motion will be presented to the United States District Judge for consideration and may thereafter be referred to the Magistrate Judge for hearing and determination. The Magistrate Judge's initials should be used on all documents filed with the Court so that the case number reads as follows:

CV03- 6996 CAS (CWx)

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012 | <input type="checkbox"/> Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516 | <input type="checkbox"/> Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501 |
|--|---|--|

Failure to file at the proper location will result in your documents being returned to you.